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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the application of:  
**Sanderson, et al.**)  
Serial No.: **#9/818,975**) Art Unit: 2877  
Filed: **March 27, 2001**) Examiner: Mooney, Michael P.  
For: **LOSS COMPENSATING OPTICAL**) Docket No.: 321903.1010  
**SPLITTER**)

**DECLARATION BY LELON WAYNE SANDERSON**

Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

County of Lincoln)  
State of Tennessee)

I, Lelon Wayne Sanderson, state as follows:

1.

I am a co-inventor of the inventions defined by the above-identified patent application and of the subject matter described therein.

2.

At least one year ago, I and the other co-inventor, Jack Hayes, assigned our interest in the patent application to Verilink, Corp. ("Verilink"). It was my understanding that Verilink intended to prosecute the application until it issued as a patent or at least until a final determination regarding patentability was reached by the U.S. Patent & Trademark Office. However, without my knowledge, Verilink apparently changed its position on prosecuting the application and decided to stop prosecuting the application. As an apparent result of this

decision, Verilink did not respond to an Office Action mailed on November 18, 2003 requiring restriction to one group of claims.

3.

During June, 2004, it came to my attention that Verilink had possibly elected to stop prosecuting the application. Thus, I contacted representatives of Verilink to ascertain the status of the application as well as Verilink's intention on prosecuting the application. After numerous attempts to contact Verilink, I finally received an indication from Verilink that it did not intend to prosecute the application without informing me the status of the application. Further, Verilink agreed to assign the application to me so that I could prosecute the application at my own discretion and costs. Upon receiving the foregoing information and assignment from Verilink, I promptly solicited the services of a patent attorney to investigate the status of the application. During his investigation, the foregoing patent attorney discovered that no reply had been submitted for the Office Action of November 18, 2003. In response to this information, the patent attorney, with my authorization, prepared a response to the Office Action and a Petition for reviving the instant application. From my perspective, the delay in responding to the Office Action of November 18, 2003 until at least the date of execution of this Declaration was unintentional. Further, I believe that, from the perspective of the other co-inventor, Jack Hayes, who similarly was unaware of Verilink's decision to stop prosecuting the application, the delay in responding to the Office Action of November 18, 2003 until at least the date of execution of this Declaration was unintentional.

4.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

FURTHER DECLARANT SAYETHS NOT.

Lelon Wayne Sanderson  
Lelon Wayne Sanderson

7/20/2004  
Date